

Congress of the United States
Washington, DC 20515

October 7, 2019

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary DeVos:

We write to express our serious concerns regarding actions you have taken to restrict the free expression of ideas at the Department of Education and in institutions of higher education across the country. We detail below the specific troubling actions that have prompted this request. Additionally, we respectfully request certain documents, described below, so that we may undertake necessary oversight of the Department's activities.

Censorship of Critical Viewpoints on the Department's Internal Network

We are concerned about your efforts to censor viewpoints that are critical of the Department's policies. News reports earlier this year revealed that the Department had blocked from its internal network the website of Public Citizen,¹ a non-profit advocacy organization that has opposed many of your policies.² It has challenged the Department's improper administration of the TEACH Grant program,³ criticized your failure to protect student borrowers' rights,⁴ and brought litigation to stop regulatory rollbacks that benefit predatory schools.⁵

After Public Citizen challenged your policies, you blocked Department of Education employees from accessing the Public Citizen website – and, by extension, its ideas – on the Department's internal network. Although the Department has now restored access to this website, it only did so in the face of a lawsuit. We are concerned that the Department may be blocking other websites on its internal network.

Threatening Public Institutions

On March 20, 2019, President Trump issued Executive Order 13864 (EO 13864), which purportedly seeks to promote “free inquiry” on college and university campuses by threatening to withhold certain federal funds.⁶ However, it is clear from his remarks at the signing ceremony (alleging that schools prevent conservative students from challenging “rigid, far-left ideology”⁷) and tweets⁸ containing explicit threats against schools like University of California Berkeley,⁹ that the President views EO 13864 not as an instrument of free speech but as a tool to punish institutions with whom he disagrees.¹⁰

Of course, problems of free speech on college campuses are complex and require creative solutions, and bigoted, far-right speakers have repeatedly tested the free speech policies of Berkeley and other universities.¹¹ However, the President's Executive Order does not even attempt to offer a thoughtful solution to the complex civil and constitutional challenges that institutions of higher education face. On the contrary, his threats against institutions that he perceives as political opponents undermine First Amendment values. Additionally, his selective application of the Executive Order to institutions he regards as political enemies suggests that his political allies are free to violate constitutional norms, so long as they do so in defense of the President.

Ignoring Political Allies Who Censor Students

You stated that "we are inundated daily with stories of administrators and faculty manipulating the marketplaces of ideas."¹² Unfortunately, despite Executive Order 13864, which directs the Department to ensure institutions promote free inquiry, you have failed to act in cases of suppression of ideas that involve the administration's political allies, such as Liberty University.

For example, when Liberty University's student code of conduct was leaked, detailing extreme restrictions on student free speech and association rights, the Department of Education did not act. Liberty reportedly bans LGBTQ relationships and places content restrictions on media students can view.¹³ Additionally, Jerry Falwell Jr., president of Liberty University and advisor to President Trump,¹⁴ personally censors students. In one case, he blocked a student-written column, criticizing then-candidate Trump for boasting of sexually assaulting women, from being published in a student-run newspaper.¹⁵

Mr. Falwell's censorship and Liberty's code of conduct facially violate existing Title IX guidance and President Trump's executive order.¹⁶ Given that Liberty's violations are public and longstanding, we are left to conclude that the Department's failure to act is deliberate and that it is only interested in enforcing free speech policies against institutions it deems unfriendly.

Request for Information

We are extremely concerned by this administration's efforts to intimidate world-renowned institutions and chill the free expression of ideas under the guise of upholding the First Amendment. In order to conduct the appropriate oversight of the Department's activities, we respectfully request the following information no later than October 21, 2019:

- 1) All Office of General Counsel memoranda regarding the Department's policies and/or authority to limit or block access to websites on its internal agency network;
- 2) A list of every website that the Department has limited or blocked access to on its internal network at any point, for any length of time, since January 20, 2017;
- 3) All Office of General Counsel memoranda related to the Department's authority to investigate any and all violations of the First Amendment or Executive Order 13864;
- 4) Documentation sufficient to show the Department's process for evaluating and investigating claims of violations of the First Amendment or Executive Order 13864;

- 5) Documentation sufficient to show the conclusions of any investigations into institutions of higher education due to First Amendment violations or violations of Executive Order 13864; and
- 6) A list of any and all investigations into claims of violations of the First Amendment or Executive Order 13864 that have been initiated but not yet completed.

We thank you for your attention to this inquiry and look forward to your reply.

Sincerely,



ANDY LEVIN
Member of Congress



JAMIE RASKIN
Member of Congress

¹ See <https://www.courtlistener.com/recap/gov.uscourts.dcd.206040/gov.uscourts.dcd.206040.16.0.pdf> (“[E]ffective June 6, 2019, the Department of Education has provided access to Public Citizen’s website through its guest Wi-Fi network as well as through internal agency network.”)

² See <https://www.citizen.org/about/>

³ See <https://www.citizen.org/news/teach-grant-program-plagued-by-mismanagement-inadequate-oversight/>

⁴ See <https://www.citizen.org/news/department-of-education-helatedly-implements-protections-for-student-borrowers/>

⁵ See <https://www.citizen.org/news/court-agrees-that-trumps-education-department-unlawfully-delayed-a-rule-that-protects-students-from-predatory-schools/>

⁶ Executive Order on Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities. Available at: <https://www.whitehouse.gov/presidential-actions/executive-order-improving-free-inquiry-transparency-accountability-colleges-universities/>. See also <https://www.nytimes.com/2019/03/21/us/politics/trump-free-speech-executive-order.html>.

⁷ You, too, have criticized so-called “civic sickness,” which, you claim, manifests when universities “shield students from ideas.” https://www.washingtonpost.com/education/2018/09/20/its-hard-overstate-irony-betsy-devoss-talk-about-free-speech-civics-education/?utm_term=.b331b6782ca2. Judging solely from this administration’s rhetoric, one might conclude that far-left ideologues exert Orwellian control over American higher education. This account is divorced from reality. Nonetheless, as Orwell warned, we must remain vigilant against government censorship of ideas critical of those in power.

⁸ “If U.C. Berkeley does not allow free speech and practices violence on innocent people with a different point of view - NO FEDERAL FUNDS?” <https://twitter.com/realdonaldtrump/status/827112633224544256?lang=en>

⁹ “If U.C. Berkeley does not allow free speech and practices violence on innocent people with a different point of view - NO FEDERAL FUNDS?” <https://twitter.com/realdonaldtrump/status/827112633224544256?lang=en>

¹⁰ <https://www.nytimes.com/2019/03/21/us/politics/trump-free-speech-executive-order.html>

¹¹ Berkeley’s most publicized free speech conflict came after the cancellation of a multi-bigoted speaker. This cancellation was not due to his deplorable ideas, which are so extreme that Australia even banned his entry. <https://www.aljazeera.com/news/2019/03/australia-bars-milo-yiannopoulos-mosque-attack-comments-190316140539695.html>. Instead it was due to the physical danger presented by non-student protestors as well as the costs associated with handling those threats (https://www.washingtonpost.com/news/morning-mix/wp/2017/08/30/berkeleys-mayor-asked-uc-berkeley-to-cancel-milo-yiannopoulos-the-university-said-no/?utm_term=.5cf6eac0f9ce). Still, Berkeley has a storied history of protecting free speech and it continues to grapple with these issues today (<https://freespeech.berkeley.edu/>). With the support of the administration, students invite speakers from across the political spectrum, such as former Republican Senator and Presidential Candidate Rick Santorum. <https://bayareagop.com/mc-events/berkeley-college-republicans-present-hon-rick-santorum/>.

¹² See https://www.washingtonpost.com/education/2018/09/20/its-hard-overstate-irony-betsy-devoss-talk-about-free-speech-civics-education/?utm_term=.b331b6782ca2

¹³ See <https://archive.org/details/TheLibertyWayLibertyUniversity/page/n11> (“Sexual relations outside of a biblically ordained marriage between a natural-born man and a natural-born woman are not permissible at Liberty University.”).

¹⁴ See https://www.washingtonpost.com/news/answer-sheet/wp/2016/11/28/evangelical-leader-jerry-falwell-jr-says-trump-asked-him-to-be-education-secretary/?utm_term=.9ef0e4cce92d

¹⁵ See <https://www.insidehighered.com/news/2016/10/19/liberty-blocks-its-student-paper-publishing-column-critical-trump>; see also <https://www.insidehighered.com/quicktakes/2018/08/22/more-student-press-censorship-alleged-liberty>, and <https://www.insidehighered.com/news/2019/03/25/jerry-falwell-key-trump-ally-falls-short-big-talk-free-speech-critics-say>.

¹⁶ See <https://www.insidehighered.com/news/2017/02/27/liberty-and-bob-jones-universities-may-run-afoul-obama-title-ix-protections-lgbt>